

REMARKS

Summary of the Office Action

In a telephone communication on 06/19/2007, a Restrictions/Elections Requirement has been requested as follows:

Restriction: Between Group I (claims 1-7) and Group II (Claims 21-35);

Election: Between the species of claim 34 and of claim 35.

Response to the Office Action

A. Election

Applicant elects Group I, corresponding to claims 1-7. Applicant further elects the species of claim 35. This election is made with traverse, for the reasons discussed below.

Applicant expressly reserves the right to rejoin any non-elected claims upon allowance of the elected claims.

B. Traverse

The requirement for restriction is respectfully traversed, because such requirement appears to be based on a belief that the different groups of claims set forth have obtained a different status in the art.

Manual of Patent Examining Procedure (8th ed.) § 802.01 points out that a requirement for restriction is proper only if the different inventions are truly independent, which means that there is no disclosed relationship between the two or more subjects disclosed; that is, that they are unconnected in design, operation or effect, and they must be capable of separate manufacture, use or sale, and are patentable over each other.

Additionally, Manual of Patent Examining Procedure (8th ed.) § 803 requires that it be demonstrated that the two or more claimed inventions have no disclosed relationship. A simple allegation is not believed to be sufficient to support the required demonstration. It is submitted that the burden is on the Examiner to cite appropriate prior art to clearly show that the two or more disclosed invention clearly have distinct status in the art. Failing that, a restriction requirement is believed not to be proper.

It is further submitted that in view of the fees and costs for filing divisional patent

applications, for multiple prosecutions, and for maintaining the resulting patents places an undue burden on the Applicant, especially in view of the prior Election/Restrictions Requirement of February 14, 2006.

By submitting the present traverse, Applicant is not acknowledging that the claims of Group I or II may be used to support an obviousness rejection of one group in view of the other, and expressly reserves the right rebut any such contentions on the basis of law.

The requirement for election is also respectfully traversed. 37 CFR 1.141 points out that distinct inventions may not form a single general inventive concept and may not be claimed in one application. However, the rule states that more than one species of an invention may be specifically claimed in different claims in a single application, provided the application also includes an allowable generic claim and all the claims to species in excess of one are written in dependent form or otherwise include all limitations of the generic claim. It is submitted that is precisely the situation in this application, in which at least claim 1 is generic. Therefore, the requirement for election is believed to be improper.

Conclusion

Applicant has provided the requested election, but in view of the foregoing remarks, Applicant respectfully request that the Restriction/Elections Requirement be withdrawn.

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Respectfully submitted,

/Franco A. Serafini/

Franco A. Serafini

Reg. No. 52,207

Attorney for Applicants

LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
11988 El Camino Real, Ste 200
San Diego, California 92130
Tel.: (858) 720-6368
Fax : (858) 523-4314